

House Bill 533 (AS PASSED HOUSE AND SENATE)

By: Representatives Reese of the 98<sup>th</sup>, Cox of the 102<sup>nd</sup>, Everson of the 106<sup>th</sup>, Coleman of the 97<sup>th</sup>, Walker of the 107<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend an Act authorizing Gwinnett County and the governing authority thereof to appoint a Merit System Board, approved April 18, 1969 (Ga. L. 1969, p. 3051), as amended, so as to comprehensively revise and restate such Act; to provide a short title; to provide definitions; to establish the Merit System Board and provide for its membership, qualifications, terms of office, compensation, removal, powers, duties, and responsibilities; to provide for meetings; to provide for officers and their duties; to provide for unclassified positions; to provide for certain hiring preferences; to prohibit certain activities by classified employees; to provide penalties for violations; to provide for oaths; to provide for severability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

An Act authorizing Gwinnett County and the governing authority thereof to appoint a Merit System Board, approved April 18, 1969 (Ga. L. 1969, p. 3051), as amended, is amended by striking Sections 1 through 18 of the Act and inserting in lieu thereof the following:

"SECTION 1.

This Act may be cited as the 'Gwinnett County Merit System Act.'

SECTION 2.

Definitions.

The following terms when used in this Act shall have the following meanings unless the context clearly requires otherwise:

(1) 'Appointing authority' means the officer, commission, board, or body having the power of appointment, employment, or removal from positions in any office, department, commission, board, or institution; or any person or group of persons having the power by

1 virtue of the constitution, statute, or lawfully designated authority to make appointments  
2 or employments to positions in Gwinnett County.

3 (2) 'Board' means the Merit System Board of Gwinnett County.

4 (3) 'Classified employee' means any employee holding a position in the classified  
5 service.

6 (4) 'Classified service' means all offices and positions of trust or employment in the  
7 service of Gwinnett County, except those placed in the unclassified service by this Act.

8 (5) 'County administrator' means the individual appointed by the governing authority to  
9 manage the day-to-day activities of county government operations.

10 (6) 'Executive secretary' means the executive secretary of the Merit System Board of  
11 Gwinnett County.

12 (7) 'Governing authority' means the board of commissioners of Gwinnett County.

13 (8) 'Position' means any office of employment in the service of Gwinnett County.

14 (9) 'Public hearing' means the opportunity, given after public notice of at least five days,  
15 for any person or persons to appear and be heard on the matter involved at a hearing open  
16 to the public.

### 17 SECTION 3.

18 Merit System Board. Creation, qualification of members, compensation,  
19 terms of appointment, removal.

20 (1) Creation of the board. There is hereby created the Merit System Board of Gwinnett  
21 County which shall consist of five qualified members appointed by the governing  
22 authority.

23 (2) Selection of board members. The governing authority shall select one candidate from  
24 each commission district for appointment to the board. The candidates shall be appointed  
25 to the Merit System Board by the governing authority. When four members of the Merit  
26 System Board have been selected in the manner set forth above, an election shall be  
27 called by the Gwinnett County Board of Elections and Registration to select the fifth  
28 candidate for nomination to the Merit System Board for post five. Only those individuals  
29 who would fall within the category of classified employees of Gwinnett County shall  
30 have the right to run or to vote for the fifth candidate to the Merit System Board. There  
31 shall be 30 days from the date that the election is called by the Board of Elections and  
32 Registration until the date the election shall be held. Any classified employee of  
33 Gwinnett County desiring to have his or her name placed on the ballot must submit to the  
34 Board of Elections and Registration a petition signed by at least 10 percent of the  
35 employees of Gwinnett County who would fall within the classification of the classified

employees as defined herein at least ten days prior to the date of the election. In the event no individual receives more than 50 percent of the votes cast in said election, there shall be an election held by the Board of Elections and Registration within ten days of the date of the first election. A ballot shall be prepared by the Board of Elections and Registration on which shall be placed the names of two individuals receiving the greatest number of votes cast. When a candidate is selected by the individuals who would fall within the class defined herein as classified employees, this individual shall be appointed to the Merit System Board by the governing authority as the fifth member of said board. The persons appointed to fill subsequent posts on the board shall be selected for appointment in the same manner as provided herein for the selection of the original members of the board.

(3) Qualifications of the board members. The governing authority shall not appoint to said board as a member thereof any person who:

(A) Has not been a resident of Gwinnett County for two or more years next preceding appointment to the board;

(B) Shall hold an elective or appointive office in federal, state, county, or municipal government, provided that prior appointment as a member of the board shall not disqualify a person from being reappointed thereto; or

(C) Shall have held political office in Gwinnett County during the 12 months preceding his or her appointment to the board.

(4) Terms of appointment; vacancies. The governing authority shall appoint the original members of the board for staggered terms. The length of the terms of the original members of the board shall be in the discretion of the governing authority, but shall not exceed four years. The person appointed from Commission District No. 1 shall fill Post No. 1 on the board. The person appointed from Commission District No. 2 shall fill Post No. 2 on the board. The person appointed from Commission District No. 3 shall fill Post No. 3 on the board. The person appointed from Commission District No. 4 shall fill Post No. 4 on the board. The person selected by the classified employees by the method set forth herein and appointed to the board shall fill Post No. 5 on the board. After the expiration of the terms of the members appointed to each respective post, the terms of members filling all subsequent posts shall be for four years. A vacancy in the membership of said board caused by a member's death, resignation, disqualification, or other condition shall be filled by appointment of the governing authority for the unexpired term of such member. No election shall be required to be held by the classified employees in order for the governing authority to appoint a person to fill an unexpired term for Post No. 5 on the board.

1 (5) Chairperson and vice chairperson. At its initial meeting and annually thereafter, the  
2 board shall elect one member as chairperson and another as vice chairperson.

3 (6) Compensation of board members; provision for facilities. It is hereby made the duty  
4 of the governing authority to appropriate annually a sum of money sufficient to enable  
5 the board to carry out properly the purpose of this Act. Each member of the board shall  
6 be paid at a per diem rate to be established by the board of commissioners for time  
7 actually devoted to the business of the board. The board shall hold its meetings in a  
8 Gwinnett County facility. It shall be the duty of all officers having charge of public  
9 buildings of the county to allow the reasonable use of the facilities thereof by the board  
10 for the performance of its duties and in all proper ways to facilitate the work of the board.

11 (7) Removal of board members. No member of said board may be removed from office  
12 prior to the expiration of his or her term except for cause after having been granted a  
13 notice and afforded a public and open hearing before the governing authority of said  
14 county. Prior to said hearing, said member shall be served personally or by registered or  
15 certified mail addressed to his or her residence as shown in the files of the said governing  
16 authority, at least ten days before the date set for hearing, with written specifications of  
17 the charges against him or her.

#### 18 SECTION 4.

##### 19 Meetings of the board.

20 The board shall hold meetings or hearings as often as necessary in order to fulfill the  
21 provisions of this Act. Three members shall constitute a quorum for the conduct of  
22 business and official action of the board shall require three affirmative votes. All of said  
23 meetings shall be conducted in compliance with the Georgia Open Meetings Law,  
24 O.C.G.A. Ch. 50-14. Ten days' written notice thereof shall be given to each member by  
25 the executive secretary of the board, or his or her designee, who shall, under the direction  
26 of the board, also keep minutes of each meeting.

#### 27 SECTION 5.

##### 28 Duties of the board.

29 It shall be the duties, functions, and responsibilities of the board to represent the interest  
30 of the public in the improvement of personnel administration and the selection of qualified  
31 personnel. It shall be the duty of the board:

(1) After public hearing, to recommend to the governing authority for the latter's timely approval or rejection of rules, regulations, and plans, including subsequent deletions and amendments thereof, for the administration of this Act;

(2) To hear and determine appeals and complaints respecting the official recommendations of the executive secretary and such other matters as may be referred to the board by the executive secretary;

(3) On its own motion or when requested to do so by the governing authority, to make and report on investigations affecting classified employees; and

(4) To provide employment opportunities to veterans that are consistent with federal and state law.

## SECTION 6.

### Powers of the board.

The board, each member of the board, and the executive secretary each shall have the power to administer oaths, subpoena witnesses, and compel the production of documents, including, but not limited to, documents and correspondence, audio/visual tapes, and computer generated information relevant to any investigation or hearing authorized by this Act. Any person who shall fail to appear in response to a subpoena or to answer any questions or produce any such documents pertinent to any such investigation or hearing shall be guilty of a misdemeanor.

## SECTION 7.

### Executive secretary; appointment; removal; compensation.

(1) The governing authority shall appoint an executive secretary and an alternate executive secretary who shall serve when the executive secretary is unable to perform his or her duties. Such executive secretary and alternate executive secretary shall be individuals competent in the field of public personnel administration and thoroughly in sympathy with the application of the merit system. Neither the executive secretary nor the alternate executive secretary shall be the human resources director or any employee of the human resources department.

(2) The persons appointed to fill the positions of executive secretary and alternate executive secretary may hold these positions while performing other unrelated duties as employees of Gwinnett County and may be removed by the governing authority from the position as executive secretary or alternate executive secretary at any time without cause

1 when a change in this position is deemed appropriate by the governing authority. The  
2 governing authority's decision to remove a person from either position shall be final.

3 (3) The executive secretary or alternate executive secretary and the human resources  
4 director shall work cooperatively in carrying out the responsibilities of this Act.

5 SECTION 8.

6 Executive secretary duties.

7 It shall be the duties of the executive secretary or his or her designee to:

8 (1) Attend meetings of the board, act as its secretary, and record its official actions.

9 These responsibilities may be performed by administrative support staff for the executive  
10 secretary;

11 (2) After the governing authority's approval thereof, publish the content of the Gwinnett  
12 County Merit System Rules and Regulations and modifications thereto for public  
13 distribution and to give immediate notice thereof to all appointing authorities affected  
14 thereby. Thereafter all appointing authorities and classified and other employees affected  
15 by these rules shall assist in all proper ways in carrying them into effect. These  
16 responsibilities may be performed by administrative support staff for the executive  
17 secretary;

18 (3) Keep records of the minutes of merit board meetings or hearings and of any other  
19 records necessary for the proper administration of this Act. These responsibilities may  
20 be performed by administrative support staff for the executive secretary;

21 (4) Conduct grievance conferences and make recommendations to the parties on the  
22 resolution of such grievances except that the executive secretary shall serve as the final  
23 authority on grievances regarding reprimands;

24 (5) Secure the attendance of witnesses and production of documents, correspondence,  
25 audio/visual tapes, computer generated information, and other documentary evidence  
26 pertinent to any such investigations or hearings authorized by this Act. These  
27 responsibilities may be performed by administrative support staff for the executive  
28 secretary; and

29 (6) Perform any other lawful acts required to effectuate the purposes of this Act.

30 SECTION 9.

31 Unclassified service.

32 The classified service, as defined in paragraph (4) of Section 2 of this Act, does not include  
33 the following members of the unclassified service:

- 1 (1) Officers elected by the people and persons appointed to fill vacancies to such elective
- 2 offices;
- 3 (2) Officers and employees specifically exempted by law;
- 4 (3) Members of boards or special commissions appointed by the county governing
- 5 authority for special purposes such as the Board of Tax Assessors or Board of Health;
- 6 (4) Clerk of the board of commissioners of Gwinnett County;
- 7 (5) Persons temporarily appointed or designated to make or conduct a special inquiry,
- 8 investigation, or examination where such appointment or designation is certified by the
- 9 board to be for employment which should not be performed in the classified service;
- 10 (6) Election officials and members of the Gwinnett County Board of Elections and
- 11 Registration;
- 12 (7) Heads of departments selected or appointed by the board of commissioners or county
- 13 administrator to include, but not be limited to, the chief of police, chief of fire and
- 14 emergency services, chief financial officer, and director of transportation; those selected
- 15 by the superior court judges, such as the clerk of records court; deputy directors such
- 16 as the chief deputy sheriff, chief deputy tax commissioner, chief deputy clerk of superior
- 17 court, and other deputy directors;
- 18 (8) Assistant solicitor generals;
- 19 (9) The personal staff to any judge of superior court or other court, not to exceed a total
- 20 of three staff members per judge; and
- 21 (10)(A) Personnel employed by the tax commissioner, sheriff, clerk of the superior
- 22 court, or judge of the probate court, who are employed or to be employed in an upper
- 23 managerial or upper supervisory capacity and who consent in writing to accept such
- 24 upper managerial or upper supervisory positions knowing that such employment is in
- 25 the 'unclassified service' as defined under this Act. However, the number of
- 26 unclassified service personnel in an upper managerial or upper supervisory capacity
- 27 under this paragraph shall not exceed 10 percent of the total number of full-time
- 28 employees in such particular office in which such employee is employed or to be
- 29 employed.
- 30 (B) Nothing in this paragraph shall be interpreted to change the employment status of
- 31 any employee who, on the effective date of this Act, is employed by the tax
- 32 commissioner, sheriff, judge of the probate court, or clerk of the superior court.
- 33 (C) Nothing in this paragraph shall be interpreted to require or limit all upper
- 34 managerial and upper supervisory positions to be only unclassified positions.

## SECTION 10.

## Special consideration for employment.

Any employee of Gwinnett County who is not an elected official and is excluded from the classified service under paragraphs 4, 7, 8, and 9 of Section 9 of this Act shall be given special consideration for employment as a classified employee of Gwinnett County, provided that said individual is qualified for a position as a classified employee and provided that there is an opening available in the ranks of the classified employees.

## SECTION 11.

## Political activity and recommendations.

In applying the provisions of this Act or in doing any of the things hereby provided, no employee of the classified service shall be a candidate for or an officer of a political office with Gwinnett County during his or her employment with the county. County employees may not engage in any political campaign activities while on duty, while in the workplace, while in uniform, or while using a county vehicle. This prohibited activity includes, but is not limited to, distributing information or soliciting contributions or services for any political party, political candidate, or organization while on duty. County employees may not use county funds, supplies, or equipment for such purposes. Nothing contained in this section shall be construed to restrict the right of any employee in the classified service to hold membership in and support a political party, to vote as he or she chooses, to express personal opinions on political subjects and candidates, to maintain political neutrality, or to attend political meetings during nonworking hours. However, county employees shall not participate either directly or indirectly in Gwinnett County elections, except for voting in such county elections. The Merit System Board shall be authorized to promulgate reasonable rules, in conformance with state and federal law, which restrict the political activities of employees in the classified service.

## SECTION 12.

## Penalties.

Any person in Gwinnett County who shall willfully violate or conspire with or solicit another to violate any of the provisions of this Act shall be guilty of a misdemeanor and shall, on conviction thereof, be punished as for a misdemeanor as prescribed by the laws of Georgia. If such convicted person is in the classified service, he or she shall be



dismissed therefrom and shall not be eligible for reemployment, reappointment, or reinstatement for a period of five years from the date of such conviction.

**SECTION 13.**

**Oaths.**

The board, the executive secretary, and all employees in the classified service shall take the oath of office as required by the governing authority. The executive secretary shall take his or her oath before the chairperson of the board.

**SECTION 14.**

**Severability.**

Should any section or provision of this Act be held to be unconstitutional or invalid such section or provision shall not affect the validity of this Act as a whole or any part thereof other than the part so held to be unconstitutional.

**SECTION 15.**

**General Repeal.**

All laws in conflict with this Act are hereby repealed.

**SECTION 16.**

**Effective Date.**

This Act shall take effect when a resolution is adopted by the governing authority appointing the first member to the Merit System Board."

**SECTION 2.**

All laws and parts of laws in conflict with this Act are repealed.